

EXHIBIT A

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8 **IN THE UNITED STATES DISTRICT COURT**

9 **FOR THE DISTRICT OF ARIZONA**

10 In Re Bard IVC Filters Products
 11 Liability Litigation

No. MD-15-02641-PHX-DGC

**APPLICATION TO SERVE AS CO-LEAD
AND LOCAL/LIAISON COUNSEL**

12
 13 In support of Plaintiffs' Co-Lead/Liaison Counsel's Memorandum Re Leadership
 14 Appointments and pursuant to the Court's Order of February 17, 2017, Mark O'Connor at
 15 Gallagher & Kennedy, P.A. ("G&K") hereby submits this Application to serve as Co-Lead
 16 and Local/Liaison Counsel for Plaintiffs in the Bard IVC Filters MDL.

17 **I. INTRODUCTION**

18 Mark S. O'Connor requests that the Court approve his appointment as Co-Lead and
 19 Local/Liaison Counsel in this MDL. It is his intention, with the Court's permission, that the
 20 same team of lawyers from G&K continue to work with him in this leadership as they have
 21 done since its inception. This Application will address the criteria requested by the Court in
 22 its September 15, 2015, order (Doc. 72).

23 **II. WILLINGNESS AND ABILITY TO COMMIT TO THE CASE**

24 I am one of the five shareholders (Mark S. O'Connor, Robert W. Boatman, Shannon
 25 L. Clark, Paul L. Stoller, and Lincoln Combs) at G&K who are committed to this case. I
 26 have been heavily involved in this MDL, and am also a member of the trial team in *Austin v.*
 27 *Bard et al.*, Broward County, Florida, which is regarded as a *de facto* bellwether case.
 28 Collectively I have taken or defended sixteen depositions of corporate, expert, plaintiff, and

1 lay witnesses. I have also drafted and argued other dispositive motions, including *Daubert*
2 motions and motions *in limine* in the *Austin* bellwether case, many of which are anticipated in
3 this MDL. I share my trial responsibilities with counsel common to this MDL including
4 Ramon Lopez (Co-Lead), Julia Reed Zaic (PEC Member), Joseph R. Johnson (PLC
5 Member), Matthew Shultz (PLC Member), David DeGreeff (PLC firm member), and Laura
6 Smith (PLC firm member).

7 I have met with members of the Plaintiffs' Executive Committee (PEC) and
8 specifically Ramon Lopez about my responsibilities as co-lead counsel in this matter. I
9 anticipate that I will have a good working relationship with all plaintiff committee members
10 and attorneys involved in the MDL and have worked with most on discovery matters in this
11 MDL. I have also had dealings, interactions with defense counsel during discovery in both the
12 MDL and the *Austin* bellwether case including participation in meet and confers, and acting
13 as opposing counsel during depositions and court proceedings. I believe that my involvement
14 as co-lead counsel in this matter will continue to foster and promote a professional and
15 cooperative working relationship with the defense and represent Plaintiffs best interests. My
16 service as Local/Liaison, Co-Lead Counsel has been approved by the Plaintiffs' Executive
17 Committee and my background and expertise are discussed in Sections III and IV, below.

18 **III. ABILITY TO WORK COOPERATIVELY WITH OTHERS**

19 Over the course of my practice, I have had opportunities and responsibilities working
20 with others in large and complex litigations. Most recently, I have been actively involvement
21 in this MDL and related stated court matters. I am also representing women who have been
22 injured by transvaginal mesh in MDL Nos. 2325-27. My professional experience as outlined
23 below further demonstrates my ability to work cooperatively with opposing counsel as well
24 as co-counsel. In support of this application I offer the following judicial references for the
25 Court to consult as to my reputation and professionalism.

26 HONORABLE DOUGLAS L. RAYES
27 United States District Court
28 Sandra Day O'Connor U.S. Courthouse, Suite 526
401 West Washington Street, SPC 79
Phoenix, AZ 85003-2162

1 Phone: (602) 322-7530
2 HONORABLE KATHERINE COOPER
3 Maricopa County Superior Court
4 Central Court Building – 5A/501
5 201 West Jefferson
6 Phoenix, AZ. 85003-2243
7 Phone: (602) 506-8311

8 HONORABLE DAVID GASS
9 Maricopa County Superior Court
10 East Court Building – 514
11 101 West Jefferson
12 Phoenix, AZ. 85003-2243
13 Phone: (602) 506-8311

14 IV. PROFESSIONAL EXPERIENCE IN THIS TYPE OF LITIGATION

15 I am a shareholder in the personal injury and wrongful death litigation group at G&K
16 and certified by the Arizona Board of Legal Specialization in Personal Injury and Wrongful
17 Death. I am a seasoned and experienced trial lawyer and have served as lead counsel in
18 numerous jury trials. I have devoted the majority of my career to the representation of
19 victims of catastrophic injury and wrongful death.

20 I have experience in a wide array of cases including medical malpractice, elder abuse,
21 trucking and transportation, sexual abuse and harassment, aviation disasters, dram shop,
22 government liability, product liability, and defective medical devices. My cases often involve
23 complex medical and scientific issues, and I have developed substantial expertise in working
24 with experts in medicine, science, engineering, and other technical areas.

25 Beginning in July 2002, I became involved in the *pro bono* representation of families
26 of victims of the September 11, 2001 terrorist attacks to the Victim's Compensation Fund.
27 My service to the September 11th victims was recognized by Trial Lawyers Care and the
28 Association of Trial Lawyers of America.

I am AV rated by Martindale-Hubbell and am currently listed in the 2016 edition of
The Best Lawyers in America, 2016 edition of *Southwest Super Lawyers*, *Arizona's Finest*
Lawyers, the *National Trial Lawyers*, *Top 100 Trial Lawyers in America*, and the *National*
Association of Distinguished Counsel, *Nation's Top One Percent*. I am a member of the

1 Board of the Arizona Association of Justice a/k/a the Arizona Trial Lawyers Association. In
2 addition, I was elected in 2015 as a fellow of the *International Society of Barristers*.

3 **V. ACCESS TO RESOURCES TO ADVANCE LITIGATION IN A TIMELY**
4 **MANNER.**

5 G&K remains committed to this MDL as Co-Lead and Local/Liaison counsel, and has
6 been actively involved in this litigation since September 2015.

7 **A. Financial**

8 G&K is a large, full-service firm that has the financial resources necessary to litigate
9 an MDL. G&K remains willing to commit the necessary financial resources for the firm's
10 involvement in this case.

11 **B. Personnel**

12 As set forth in Section II, G&K has a team of five shareholders substantially involved
13 in common benefit work for the MDL, as well as several other senior attorneys and associates
14 working on MDL tasks on a project basis as necessary.

15 **C. Experience**

16 I have acquired substantial experience from my involvement in this MDL, related state
17 court cases, complex litigation, and other medical device litigation. The experience of the
18 G&K partners involved in this matter further amplifies and supplements my own experience
19 in these areas. The G&K team assembled for this case has the experience necessary to handle
20 any issues that may arise in this litigation. The G&K team has already made meaningful
21 contributions to work and projects on these cases, and, with the Court's permission, will
22 continue to do so.

23 I have personally been extensively involved in MDL discovery including depositions,
24 state/federal coordination of discovery, motion practice and bellwether trial practice. I am
25 also a member of the Plaintiffs' expert committee. As stated above, I am a member of the
26 team for the upcoming trial in the *Austin v. Bard et al.*, Broward County, Florida case which
27 was previously set to begin on March 20, 2017, but has been continued to a later date which
28 the parties anticipate will be in the Summer or early Fall of 2017. I am also co-counsel and

1 active in several Bard IVC filter Arizona state court cases. My involvement in both the MDL
2 and *Austin* has included, but was not limited to, preparing for, taking, and defending the
3 depositions of the following key witnesses:

- 4 • Jack Sullivan, Bard's former District and Western Regional Manager, taken on
5 September 16, 2016 and November 3, 2016.
- 6 • Kim Romney, Bard's Senior Product Manager, taken on January 18, 2017.
- 7 • Scott Trerotola, M.D., Bard's filter expert, taken on January 20, 2017.
- 8 • Patrick MacDonald, Bard's Vascular Sales Representative, taken on July 29,
9 2016.
- 10 • Robert E. Cortelezzi, Bard's former Regional Manager, taken on November 11,
11 2016.
- 12 • Daniel Orms, Bard's former Sales Representative, taken on August 16, 2016 in
13 the MDL and *Austin v. Bard et al.*, Broward County, Florida matter.
- 14 • Robert McMeeking, Ph.D., Plaintiff's mechanical engineering expert, deposed
15 on July 19, 2016 in the *Austin v. Bard et al.*, Broward County, Florida matter.
- 16 • Aubrey Palestrant, M.D., Bard's interventional radiology and diagnostic
17 radiology expert, taken on August 26, 2016, in the *Austin v. Bard et al.*,
18 Broward County, Florida matter.
- 19 • Paul Briant, Ph.D., Bard's mechanical engineering expert, taken on August 12,
20 2016 in the *Austin v. Bard et al.*, Broward County, Florida matter.
- 21 • Darren Hurst, M.D., Plaintiff's diagnostic radiology expert, taken on two
22 separate dates on August 19, 2016 and November 1, 2016 in the *Austin v. Bard*
23 *et al.*, Broward County, Florida. He defended the continued deposition.
- 24 • Chieh-Lin Fu, M.D., hematology-oncology physician, taken on July 14, 2016 in
25 the *Austin v. Bard et al.*, Broward County, Florida.
- 26 • Terry King, M.D., vascular surgery surgeon, taken on July 14, 2016 in the
27 *Austin v. Bard et al.*, Broward County, Florida.
- 28

- Elliott Wasser M.D., diagnostic radiologist physician, taken on June 1, 2016 in the *Austin v. Bard et al.*, Broward County, Florida.
- Plaintiff, Clare Austin, taken on March 24, 2016, in the *Austin v. Bard et al.*, Broward County, Florida.
- Ben Reiter, M.D., Plaintiff's primary care physician, taken on September 27, 2016 in the *Austin v. Bard et al.*, Broward County, Florida.
- Paul and Susan Austin, Plaintiff's parents, taken on May 5, 2016, in the *Austin v. Bard et al.*, Broward County, Florida.
- Plaintiff's boyfriend, Damir Krstic, taken on July 29, 2016, in the *Austin v. Bard et al.*, Broward County, Florida.

D. Facilities

G&K offices and staff will continue to provide the facilities and support necessary for the plaintiffs' work required in this case.

VI. SUPPORT OF OTHER ATTORNEYS

G&K has already hosted numerous meetings in its Phoenix offices of the Plaintiffs' attorneys involved in the Bard litigation. In addition, G&K has supplied conference rooms, resources, and support for visiting attorneys who come to Phoenix for MDL depositions, meetings, and other MDL matters. G&K is and will continue to serve as the local and national "headquarters" for the Plaintiffs' Leadership Committee.

VII. CONCLUSION

For the foregoing reasons, I, Mark S. O'Connor, respectfully request this Court's approval of appointment as Local/Liaison counsel, and as Co-Lead counsel with Ramon Lopez of Lopez McHugh LLP in this matter.

RESPECTFULLY SUBMITTED this 14 day of March, 2017.

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